

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



ALEJANDRO Nuevo TREJO)

Laredo Trejo Resendiz)

Plaintiff,)

v.)

Civil Action No. 3:21-cv-218-KHJ-MTP

STEVE MCKINNEY;)

OVERNIGHT PARTS ALLIANCE,)

LLC; WHOLESALE PARTS)

ALLIANCE, LLC; and)

PENSKE TRUCK LEASING)

COMPANY, LP)

Defendants)

COMPLAINT

(JURY DEMANDED)

Plaintiff, Alejandro Trejo Resendiz, files this his Complaint against Defendants, Steve McKinney, Overnight Parts Alliance, LLC, Wholesale Parts Alliance, LLC, and Penske Truck Leasing Company, L.P., as follows:

I. Parties.

1. Plaintiff, Alejandro Trejo Resendiz (“Alejandro”), is an adult Mexican National living and working on a temporary work visa issued by the United States Department of Homeland Security. Alejandro was injured while working in the course and scope of his employment with Tony Sharp who does business as Sharp Forestry, Inc. Alejandro is currently living and is domiciled at 72 Osteen Road, Gordo, Alabama 35466.

2. Defendant, Steven McKinney (“McKinney”), is an adult resident citizen of Cullman County, Alabama who resides at 408 Lake Nola, Hayden, Alabama 35079, where he may be served with process of this Court. McKinney was an operator and employee of Overnight Parts Alliance, LLC and/or Wholesale Parts Alliance, LLC at the time of the accident giving rise to this Complaint.

3. Defendant, Overnight Parts Alliance, LLC (“Overnight Parts”), is a limited liability company organized and existing under the laws of the State of Alabama. Overnight Parts may be served with process of this Court by serving its registered agent for service of process: Marvin Windham, 210 Automation Way, Irondale, AL 35210.

4. Defendant, Wholesale Parts Alliance, LLC (“Wholesale Parts”), is a limited liability company organized and existing under the laws of the State of Alabama. Wholesale Parts may be served with process of this Court by serving its registered agent for service of process: Marvin Windham, 210 Automation Way, Irondale, AL 35210.

5. Defendant, Penske Truck Leasing, Co., L.P. (“Penske”), is a limited partnership or joint venture of Penske Corporation, Penske Automotive Group, and Mitsui & Co., which is headquartered in Reading, Pennsylvania. Penske may be served with process of this Court via its registered agent for service of process in the State of Mississippi: Corporation Service Company, 7716 Old Canton Road, Suite C, Madison, Mississippi 39110.

II. Jurisdiction.

1. This Court has jurisdiction over this civil action pursuant to 28 USC §1332 in that complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

III. Facts.

1. On or about June 3, 2019, Alejandro was operating a 15 passenger van owned by Anthony Sharp, in the eastbound lane of Highway 16 near the intersection of Lovers Lane and Highway 16 in Kemper County, Mississippi. McKinney was operating a box truck owned or leased by Wholesale Parts and/or Overnight Parts and was traveling westbound on Highway 16 when he crossed over the center line into oncoming traffic and collided head on with the van being operated by Alejandro. The collision occurred completely in the eastbound lane of traffic and McKinney's actions or inactions were the sole proximate cause of the collision.

2. At the time of the accident, McKinney was acting as the and/or employee of Overnight Parts and Wholesale Parts. As such, they are legally responsible for the actions or inactions of McKinney.

3. Penske is a commercial business which leases and/or sells commercial box trucks to other to commercial entities, including Overnight Parts and Wholesale Parts. The vehicles are customized based on the requirements and/or need of the customer. Penske was independently negligent in providing the box truck as configured. Its negligence contributed to the accident in question.

IV. Claims.

a. Negligence.

1. McKinney, Overnight Parts and Wholesale Parts Alliance, were jointly, severally and/or concurrently negligent and such joint, several and/or concurrent negligence proximately caused or contributed to the collision and the serious and permanent injuries sustained by Alejandro.

2. Overnight Parts and Wholesale Parts are vicariously liable for the negligence of their employee, McKinney, who was acting within the course and scope of his employment at the time of the accident.

3. McKinney, while acting within the course and scope of his employment with Overnight Parts and Wholesale Parts, was negligent in the following respects:

- a. Failing to control the movement and momentum of his commercial vehicle;
- b. In carelessly and negligently failing to observe the vehicle which Alejandro was driving;
- c. Operating the vehicle in excessive and reckless speed and in violation of Safety Regulations as adopted by the State of Mississippi, pertaining generally to the operation of a commercial vehicle and particularly in adverse driving conditions;
- d. In violating certain Regulations and laws as adopted by the State of Mississippi which amounts to negligence per se;
- e. Failing to keep proper lookout;
- f. In willfully and wantonly operating the box truck in such a manner as to evidence a willful reckless disregard for the rights of the traveling public and a willful disregard of the state law; and
- g. In such other respects as may be shown by the evidence at trial

4. Various employees of Overnight Parts and Wholesale Parts were negligent in one or more of the following respects:

- a. Failing to properly maintain and secure the commercial vehicle and load which struck Alejandro's vehicle;
- b. In violation of statutes, regulations, and law as adopted by the State of Mississippi, pertaining generally to the operation of motor vehicles and trucks particularly in said driving conditions; and
- c. In such other respects as may be shown by the evidence at trial.

5. Penske has independent liability, separate and distinct from that of the other Defendants. Penske is in the highly specialized business of providing custom vehicles or box trucks to commercial transport companies, such as the Overnight Parts and Wholesale Parts. Penske customizes these trucks specifically to accommodate the needs of its customers. In this case, Penske provided a 2020 box truck manufactured by International. Penske knew or should have known that Overnight Parts and Wholesale Parts would be utilizing these trucks to drive long distances in potentially dangerous conditions and that their drivers may be fatigued or otherwise impaired. McKinney was extremely fatigued and impaired before and at the time of the collision. Because Penske failed to provide proper alarms, controls or safety devices in the box truck, McKinney was not alarmed and was otherwise allowed to continue his impaired driving in a reckless and grossly negligent manner. As such the independent negligent actions of Penske in providing the box truck as configured contributed to the accident in question and the serious and permanent injuries sustained by Alejandro.

b. Causation and Damages.

1. Alejandro re-alleges and adopts by reference all of the allegations contained in this Complaint and would further allege and show that the actions of the Defendants herein, as set

forth above, were the proximate cause or proximate contributing cause of the severe and permanent injuries he sustained in the accident in question.

2. As a direct and proximate result of the combined and/or concurrent acts and omissions of the Defendants, Alejandro sustained severe and permanent injuries. He has incurred and will continue to incur medical expenses in an effort to treat and rehabilitate his condition. Alejandro has lost wages and income and will lose additional wages and income in the future. He has suffered pain and mental anguish and anxiety, and will continue to do so in the future. Alejandro also suffers from a degree of permanent physical impairment as a result of his injuries.

c. Wanton, Reckless, Malicious or Wrongful Conduct in Gross Disregard for the Rights of Others.

1. Alejandro re-alleges and adopts by reference all of the allegations in this Complaint.

2. The Defendants and their employee was grossly negligent as previously stated in this Complaint, including reckless operation of the box truck. Moreover, the Defendants acted in blatant violation of regulations adopted by the state of Mississippi which caused or contributed to the severe and permanent injuries sustained by Alejandro for which punitive damages should be imposed. Such actions/inactions and gross negligence place the traveling public at an extreme risk being fatigued and impaired and therefore punitive damages, as allowed by law, should be awarded to prevent such occurrences in the future.

3. Overnight Parts and Wholesale Parts are in the business of delivering automobile parts traveling over large distances and delivering these parts in what is advertised as an expedited manner. The actions by Overnight Parts and Wholesale Parts in allowing a fatigued and impaired driver to deliver these parts overnight constituted gross negligence or reckless operation of a

commercial box truck. The conduct on the part of Overnight Parts and Wholesale Parts in advertising and using their business to expeditiously deliver parts over long distances created a heightened duty to take precautions to prevent fatigued employees from driving for extended overnight periods. In this case, McKinney was caused and allowed to drive in a fatigued, impaired manner, without proper precautions.

4. These actions by the Defendants proximately caused the accident in question and the resulting severe and permanent injuries to Alejandro.

V. Relief Sought.

1. Plaintiff, Alejandro Resendiz, demands judgment of and from the Defendants, Steve McKinney, Overnight Parts Alliance, LLC, Wholesale Parts Alliance, LLC and Penske Truck Leasing Co., L.P., jointly and severally, in an amount for actual and punitive damages to be determined by a jury along with pre-judgment and post-judgment interest, as well as attorney fees and all costs of this action and such other damages as allowed by Mississippi law.

Respectfully Submitted,



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